



# Commonwealth of Kentucky SOLICITATION

**TITLE:** Prosecuting Attorney

**DATE ISSUED**

03/17/2016

**SOLICITATION CLOSING**
**Date:** 04/18/2016

**Time:** 15:30:00

**SOLICITATION NO.**

RFP 183 1600000354

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 Education Pro Standards Board  
 Ashley Abshire

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 EPSB  
 Bid Clerk  
 Education Professional Standards Board  
 100 Airport Road  
 3rd Floor  
 Frankfort KY 40601  
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**Email Address:**  
**Contact Name:**  
**Contact Email:**  
**Vendor Customer (VC) #:**
**FOR INFORMATION CALL:**

 Ashley Abshire  
 502-564-4606

**ONLINE BIDDING PROHIBITED**

yes

**OWNERSHIP TYPE:**
☐ Sole Proprietorship ☐ Partnership ☐ Corporation

**SIGNATURE OF AUTHORIZED AGENT IS REQUIRED UNLESS RESPONSE IS SUBMITTED ELECTRONICALLY**
**FAILURE TO SIGN SHALL RENDER THE BID INVALID.**

Signature X \_\_\_\_\_ FEIN# \_\_\_\_\_ DATE \_\_\_\_\_

*All offers subject to all terms and conditions contained in this solicitation.*

Line Items

Line Group: Default						
Line	CL Description	Due Date	Quantity	Unit Issue	Unit Cost	Line Total Or Contract Amt
1	Prosecuting Attorney Services		0.00			
Comm Code	Comm Description	Manufacturer		Model #		Manuf Part #
96149	Legal Services, Attorneys					

Extended Description

Prosecuting Attorney Services

B I L L  T O	411689			S H I P  T O	411689		
	EDUCATION PROF STANDARDS BD				EDUCATION PROF STANDARDS BD		
	100 AIRPORT ROAD				100 AIRPORT ROAD		
	3RD FLOOR				3RD FLOOR		
	FRANKFORT	KY	40601		FRANKFORT	KY	40601
	US				US		

**Evaluation Criteria***The following criteria will be used when determining the award of this solicitation*

Code	Criteria Description	Points	<b>Vendor Response</b> (DO NOT LIST PRICES IN THIS SECTION. UNIT PRICES AND TOTAL PRICES MUST BE FILLED IN ADJACENT TO THEIR LINE ITEMS.)
	The bidder with the lowest Price receives the maximum score.	40	
	Submit a resume	20	
	Provide dates available to begin work and if able to work at EPSB offices	5	
	Provide names, addresses, and phone number	15	
	Bidder shall submit two writing samples.	20	

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Vendors that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a. An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b. A Social Security number;
- c. A taxpayer identification number that incorporates a Social Security number;
- d. A driver's license number, state identification card number or other individual identification number issued by an agency;
- e. A passport number or other identification number issued by the United States government; or
- f. Individually Identifiable Health Information as defined in 45 C.F.R. sec. 160.103 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" means "any person that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."

The vendor hereby agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall immediately notify as soon as possible, but not to exceed seventy-two (72) hours, the contracting agency, the Office of Procurement Services, the Commonwealth Office of Technology and the NG-KIH Program Office of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)2 applies and the vendor abides by the requirements set forth in that exception.

The vendor hereby agrees that the Commonwealth may withhold payment(s) owed to the vendor for any violation of the Identity Theft Prevention Reporting Requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a) the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology:

<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

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# REQUEST FOR PROPOSAL FOR PERSONAL SERVICE CONTRACT

## Education and Workforce Development Cabinet Education Professional Standards Board (EPSB) Prosecuting Attorney Services RFP 183 1600000354

**This document constitutes a Request for Proposal for Personal Service Contract from qualified individuals and organizations to furnish those services as described herein for the Commonwealth of Kentucky, Education and Workforce Development Cabinet/EPSB.**

Offerors are advised that any personal service contract resulting from this RFP must comply with all applicable provisions of KRS 45A and KRS 12.210 prior to becoming effective.

A contract, based on this RFP, may or may not be awarded. Any contract award from this RFP is invalid until properly approved and executed by the Finance and Administration Cabinet and filed with the Legislative Research Commission, Government Contract Review Committee.

### **Purpose and Background**

The Education Professional Standards Board (hereinafter “EPSB”) is the statutory board responsible for establishing the standards and requirements for obtaining and maintaining a teaching certificate in the Commonwealth of Kentucky. The EPSB is comprised of 17 members who represent various groups within the education community, and it is supported by an agency staff working in the areas of Certification, Educator Preparation, Professional Learning and Assessment, and Legal Services. Among many other duties, the EPSB accredits educator preparation programs; determines appropriate assessments and establishes test scores; oversees student teaching, the Kentucky Teacher Internship Program, and many other statewide programs; issues, denies, suspends, and revokes educator credentials; and, establishes and enforces a Professional Code of Ethics.

The EPSB is currently seeking proposals to supply Prosecuting Attorney Services to the Division of Legal Services. The Division of Legal Services is responsible for prosecuting disciplinary cases against certified educators. Three (3) prosecuting attorney personal service contracts may be awarded from this request for proposals.

### **Scope of Work**

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The EPSB is seeking the services of an attorney to prosecute cases of teacher misconduct pursuant to Kentucky Revised Statute (KRS) Chapter 13 B and KRS 161.120. The attorney may be assigned approximately 100 – 150 disciplinary matters to prosecute under the direction of an EPSB staff attorney during the course of the contract period. Prosecution of teacher disciplinary cases consists of investigating the allegations in the initial report or complaint, interviewing witnesses, negotiating agreed orders, drafting charges, researching relative case law, prosecuting educators in administrative hearings pursuant to KRS Chapter 13B, and drafting pre and post hearing briefs. The attorney may utilize the EPSB's offices located at 100 Airport Road, 3rd Floor, Frankfort, KY 40601, to perform the scope of services.

### **Evaluation Criteria**

The EPSB will evaluate the proposals based on the following evaluation factors:

#### **Mandatory Criteria - PASS/FAIL**

Any proposal submitted pursuant to this RFP shall demonstrate that the Bidder possesses the following qualification:

#### **A. License to practice law (or a law firm with partners/employees licensed to practice law) in good standing in the Commonwealth of Kentucky or registered to take the July 2016 Kentucky Bar Exam. PASS/FAIL**

Bidder must provide bar card or documentation from the Kentucky Bar Association (application, notice from Kentucky Bar Association) or documentation that bidder has registered to take the July 2016 Kentucky Bar Exam.

#### **B. Able to travel on a limited basis throughout Kentucky for investigations and hearings. PASS/FAIL**

Bidder must include a statement that indicates that bidder is available for limited travel throughout Kentucky.

#### **Professional references. 15 points**

The Bidder shall include names and addresses of organizations with whom the Bidder has previously contracted to provide similar services. References from agencies or employees of the Commonwealth shall not be accepted. If a reference is unable to be reached, or does not respond to the Commonwealth within the designated time frame, that reference shall receive a score of zero (0) on the Technical Proposal Score.

#### **Availability. 5 points**

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Provide dates available to begin work and if available to work at the EPSB offices. Availability to begin services on or about July 1, 2016 is preferred.

**Experience.** 20 points

Bidder shall submit a resume. Experience or familiarity with education law, administrative law, and litigation is preferred.

**Writing Sample.** 20 points

Bidder shall submit two writing samples.

**Cost.** 40 points

The Cost Proposal shall include proposed fee(s) (i.e. a flat fee, a price per hour for services, including an itemization for billing of any differential rates charged for partners, associated attorneys and non-attorneys, etc.).

The Commonwealth shall reimburse the provider the actual cost of court-imposed fees and charges, cost of any deposition, actual costs of long distance telephone and facsimile transmissions.

**Note:** The Commonwealth follows the fee guidelines set out by the Government Contract Review Committee. Fees paid by an agency shall not exceed the committee's maximum rate schedule, unless required by the complexity of litigation or title examination, or uniqueness of the subject matter, in which case, prior justification must be presented to the committee.

<b>Legislative Research Commission</b> <b>Government Contract Review</b> <b>Committee</b> <b>Legal Services: Maximum Rate Schedule</b> <b>Amended January 8, 2002</b> <i><b>*Policy Statement 99-1*</b></i>	
Partner	Not to exceed \$125/hour
Associate	Not to exceed \$100/hour
Paralegal	Not to exceed \$40/hour

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## **Instructions and Terms for Bid Submission**

Please see the following for bidding instructions along with the terms that must be adhered to in order for a bid to be accepted and evaluated for the award of a contract.

### **Schedule of RFP Activities**

The following schedule presents the major activities associated with the RFP distribution, written questions and proposal submission. The Commonwealth reserves the right at its sole discretion to change the Schedule of Activities, included the associated dates and times.

Release of RFP	March 17, 2016
Proposals Due by: 3:30PM ET	April 18, 2016
All bidders are cautioned to be aware of the security at the EPSB located at 100 Airport Road, 3 <sup>rd</sup> Floor, Frankfort, Kentucky. All bids shall be time stamped at the EPSB Office no later than the due date and time defined in this Solicitation. In person or courier delivered bids in response to this Solicitation shall be delivered to the Executive office of the EPSB. Delays due to building security checks shall not be justification for acceptance of a late bid.	

\*NOTE: ALL TIME REFERENCES ARE EASTERN TIME ZONE

## **Communications and Bid Submission Criteria**

### **1.00 Point of Contact**

The Agency Contact named below shall be the sole point of contact throughout the procurement process. All communications, oral and written (regular mail, express mail, electronic mail or fax), concerning this procurement shall be addressed to:

**Ms. Ashley Abshire**  
Education Professional Standards Board  
100 Airport Road, 3rd Floor  
Frankfort, KY 40601  
Phone: (502) 564-4606  
Fax: (502) 564-7080  
ashley.abshire@ky.gov

From the issue date of this RFP until a Contractor(s) is selected and the selection is announced,



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Offerors shall not communicate with any other Commonwealth staff concerning this RFP.

### **1.01 Questions Regarding this RFP**

Questions must be submitted in writing to the Agency Contact. The Commonwealth will respond to salient questions in writing by issuing an Addendum to the Solicitation. The Addendum shall be posted to the Commonwealth's eProcurement page.

### **1.02 Proposal Submission**

Each qualified Offeror shall submit only one (1) proposal. Alternate proposals shall not be accepted.

All submitted technical and cost proposals shall remain valid for a minimum of six (6) months after the proposal due date.

Proposals shall be submitted in two (2) parts: the technical proposal and the cost proposal. The RFP technical response shall include one (1) marked original and 3 copies under sealed cover and one (1) cost proposal marked original under separate sealed cover. All proposals must be received no later than 3:30p.m. EDT on Monday, April 18, 2016.

Proposals shall be submitted to the Agency Contact and the outside cover of the package containing the technical proposal shall be marked:

**Prosecuting Attorney Services**  
**RFP 183 1600000354**  
**TECHNICAL PROPOSAL**  
**Name of Bidder**

The outside cover of the package containing the cost proposal shall be marked:

**Prosecuting Attorney Services**  
**RFP 183 1600000354**  
**COST PROPOSAL**  
**Name of Bidder**

**ELECTRONIC OR FACSIMILE PROPOSALS SHALL NOT BE CONSIDERED**

### **1.03 Format of Technical Proposal**

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The Technical Proposal must be arranged and labeled in the manner set forth below.

**Transmittal Letter** – a Transmittal letter shall be submitted on Vendor’s letterhead, and signed by an agent authorized to bind the Vendor. The Transmittal letter shall include the following:

- a. A statement that deviations are included, if applicable.
- b. A statement that proprietary information is included, if applicable.
- c. A statement that, if awarded a contract as a result of this Solicitation, the Vendor shall comply in full with all the requirements of the Kentucky Civil Rights Act, and shall submit all data required by KRS 45.560 to 45.640.
- d. A sworn statement pursuant to KRS 11A.040 that the Vendor has not knowingly violated any provisions of the Executive Branch Code of Ethics.
- e. A statement certifying that the price in this proposal was arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Offeror or with any competitor.
- f. A statement affirming that the Vendor is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing With the Office of the Kentucky Secretary of State for the duration of any awarded contract resulting from this Solicitation.
- g. The name, address, telephone number, fax number and email address and website address, if available, of the contact person to serve as a point of contact for day-to-day operation.
- h. Subcontractor information to include the name of company, address, telephone number and contact name, if applicable.
- i. Foreign entity’s organization number issued by the Secretary of State in a certificate of authority or a statement of foreign qualification, if applicable.

**Completed and Signed Solicitation and Addenda** – An authorized representative of the agency MUST complete and sign the Solicitation form and include the following:

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- a. “Vendor” box and “Remit To” box must be completed.
- b. Vendor shall indicate ownership type.
- c. Vendor shall complete “FEIN” if applicable.
- d. Vendor shall provide date the form is completed and signed.
- e. Signed face of most recent Addenda, if applicable.

**Signed and Notarized Required Affidavit for Bidders or Offerors (available at the following link)**

<http://finance.ky.gov/services/forms/Pages/default.aspx>

**Signed and Notarized Required Affidavit for Bidders, Offerors and Contractors Claiming Resident Bidder Status (if applicable) (available at the following link)**

<http://finance.ky.gov/services/forms/Pages/default.aspx>

\*Vendors not claiming Resident Bidder Status need not submit the affidavit.

**Signed and Notarized Required Affidavit for Bidders, Offerors and Contractors Claiming Qualified Bidder Status (if applicable) (available at the following link)**

<http://finance.ky.gov/services/forms/Pages/default.aspx>

\*Vendors not claiming Qualified Bidder Status need not submit the affidavit.

**Response to the Technical Portion of the RFP** – Please provide a detailed response to the technical requirements outlined in the Evaluation Criteria. No cost information shall be provided in the technical portion.

#### **1.04 Format of Cost Proposal**

The Cost Proposal must be submitted under separate cover from the Technical Proposal and must

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be arranged and labeled in the manner specified. The Proposal with the lowest Price receives the maximum score. The Proposal with the next lowest Price receives points by dividing the lowest Price by the next lowest price and multiplying that percentage by the available points.

### **1.05 Certification Regarding Debarment and Suspension**

In accordance with Federal Acquisition Regulation 52.209-5, the Vendor shall certify, by signing the Solicitation, that to the best of its knowledge and belief, the Vendor and/or its Principals is (are) not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any State or Federal agency.

“Principals”, for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of subsidiary, division, or business segment, and similar positions.

## **EVALUATION OF PROPOSALS**

### **2.00 Rules of Procurement**

To facilitate this procurement, various rules have been established. These are described in the following paragraphs.

Vendors should review and comply with the General Conditions and Instructions for Solicitation/ Contract listed under “ Response to Solicitation” located on the eProcurement web page at <http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx> .

The procurement process will provide for the evaluation of proposals and selection of the winning proposal in accordance with State law and regulations. KRS Chapter 45A of the Kentucky Model Procurement Code provides the regulatory framework for the procurement of services by State agencies.

#### **2.01 Technical Proposal Evaluation**

The EPSB will evaluate the proposal based on the technical portion of the Evaluation Criteria. Each Vendor is responsible for submitting all relevant, factual and correct information with their offer to enable the evaluators(s) to afford each vendor the maximum score based on the available data submitted by the Vendor. Past Vendor Performance may be considered in the award of this Contract. Vendors with a record of poor performance in the last twelve (12) months may be found non-responsible and ineligible for award.

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## **2.02 Cost Proposal Evaluation**

The EPSB will evaluate the proposal based on the cost portion of the Evaluation Criteria.

## **2.03 Waiver of Minor Irregularities**

The Commonwealth reserves the right to reject any offers and to waive informalities and minor irregularities in offers received.

## **2.04 Clarification of Proposals**

The Commonwealth reserves the right to request additional information as may reasonably be required for selection, and to reject any proposals for failure to provide additional information on a timely basis.

The Commonwealth reserves the right to conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

## **2.05 Best and Final Offers**

The Commonwealth reserves the right at its discretion to request a Best and Final Offer (BAFO) for technical and/or cost proposals. Offerors are cautioned to propose their best possible offers at the outset of the process, as there is no guarantee that any Offeror will be allowed an opportunity to submit a Best and Final technical and/or cost offer.

## **2.06 Vendor Response and Public Inspection**

The RFP specifies the format, required information and general content of proposals submitted in response to the RFP. The EPSB shall not disclose any portions of the proposals prior to contract award to anyone outside the EPSB, representatives of the agency for whose benefit the contract is proposed, representatives of the Federal government, if required, and the members of the evaluation committees. After a contract is awarded in whole or in part, the Commonwealth shall have the right to duplicate, use, or disclose all proposal data submitted by Vendors in response to this RFP as a matter of public record.

Any and all documents submitted by a Vendor in response to the RFP shall be available for public inspection after contract award. No such documents shall be exempt from disclosure

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under the Kentucky Open Records Act regardless of the vendor's designation of the information contained therein as proprietary, confidential, or otherwise. Therefore, the Commonwealth will not redact or withhold any documents submitted in response to the RFP if a request to inspect these records is made.

The Commonwealth of Kentucky shall have the right to use all system ideas, or adaptations of those ideas, contained in any proposal received in response to this RFP. Selection or rejections of the proposal will not affect this right.

## **2.07 Reciprocal Preference for Kentucky Resident Bidders and Preferences for a Qualified Bidder**

The scoring of bids/proposals is subject to **Reciprocal preference for Kentucky resident bidders and Preferences for a Qualified Bidder or the Department of Corrections, Division of Prison Industries (KAR 200 5:410).**

**Vendors not claiming resident bidder or qualified bidder status need not submit the corresponding affidavit.**

### **KRS 45A.490 Definitions for KRS 45A.490 to 45A.494.**

As used in KRS 45A.490 to 45A.494:

- (1) "Contract" means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and
- (2) "Public agency" has the same meaning as in KRS 61.805.

### **KRS 45A.492 Legislative declarations.**

The General Assembly declares:

- (1) A public purpose of the Commonwealth is served by providing preference to Kentucky residents in contracts by public agencies; and
- (2) Providing preference to Kentucky residents equalizes the competition with other states that provide preference to their residents.

### **KRS 45A.494 Reciprocal preference to be given by public agencies to resident bidders – List of states – Administrative regulations.**

- (1) Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of

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the nonresident bidder.

(2) A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:

(a) Is authorized to transact business in the Commonwealth; and

(b) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.

(3) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.

(4) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.

(5) This section shall apply to all contracts funded or controlled in whole or in part by a public agency.

(6) The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.

(7) The preference for resident bidders shall not be given if the preference conflicts with federal law.

(8) Any public agency soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

The reciprocal preference as described in KRS 45A.490-494 above shall be applied in accordance with 200 KAR 5:400.

### **Determining the residency of a bidder for purposes of applying a reciprocal preference**

Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its response the attached Required Affidavit for Bidders, Offerors, and Contractors Claiming Resident Bidder Status. The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of resident bidder status. Failure to provide such documentation upon request shall result in disqualification of the bidder or contract termination.

A nonresident bidder shall submit, along with its response, its certificate of authority to transact business in the Commonwealth as filed with the Commonwealth of Kentucky, Secretary of State. The location of the principal office identified therein shall be deemed the state of residency for that bidder. If the bidder is not required by law to obtain said certificate, the state of residency for that bidder shall be deemed to be that which is identified in its mailing address as provided in

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its bid.

### **Preferences for a Qualified Bidder or the Department of Corrections, Division of Prison Industries (KAR 200 5:410).**

Pursuant to 200 KAR 5:410, and KRS 45A.470, Kentucky Correctional Industries will receive a preference equal to twenty (20) percent of the maximum points awarded to a bidder in a solicitation. In addition, the following “qualified bidders” will receive a preference equal to fifteen (15) percent of the maximum points awarded to a bidder in a solicitation: Kentucky Industries for the Blind, any nonprofit corporation that furthers the purposes of KRS Chapter 163 and any qualified nonprofit agencies for individuals with severe disabilities as defined in KRS 45A.465(3). Other than Kentucky Industries for the Blind, a bidder claiming “qualified bidder” status shall submit along with its response to the solicitation a notarized affidavit which affirms that it meets the requirements to be considered a qualified bidder- affidavit form included. If requested, failure to provide documentation to a public agency proving qualified bidder status may result in disqualification of the bidder or contract termination.

### **2.08 Right to Use Oral Presentations to Verify/Expand on Proposal**

The Commonwealth reserves the right to require Oral Presentations to verify or expand on the Technical or Cost Proposals.

### **2.09 Oral Presentation Evaluation Criteria**

The top 6 highest ranking vendors may be requested to provide oral presentations/demonstrations to answer questions or to clarify the understanding of the evaluators in accordance with the requirements of this RFP. The oral presentations shall be scheduled at the discretion of the Commonwealth. The Commonwealth reserves the right to not require oral presentations/demonstrations if they do not affect the final rankings.

### **2.10 Negotiation**

After determining the best proposal received, the EPSB reserves the right to negotiate a fair and reasonable compensation based on the pricing submitted in the offeror’s proposal. If the negotiations fail to reach an agreement on a fair and reasonable compensation rate, the EPSB reserves the right to proceed to the next highest rated proposal. Terms and conditions that may be negotiated at the sole discretion of the Commonwealth include but are not limited to issues related to the Technical and/or Cost proposals.



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## **2.11 Best Interest of the Commonwealth**

The Commonwealth will rank the proposal in the manner set forth in the Evaluation Criteria. However, the Commonwealth reserves the right to reject any or all proposals in whole or in part based on the best interest of the Commonwealth.

## **AWARD OF CONTRACT AND CONTRACT TERMS AND CONDITIONS**

### **3.00 Notification of Award**

To view the award of contract(s) and the contractor(s) receiving the award(s) for this solicitation, access the Kentucky Vendor Self Service site at <https://emars.ky.gov/online/vss/AltSelfService>. Vendors can search for the solicitation title or number in the keyword search field, or can filter their search for only awarded solicitations by clicking on Advanced Search and changing the status to awarded. The award(s) information can be accessed by clicking on the details button of the solicitation and clicking the “Notice of Award” tab. It is the vendor’s responsibility to review this information in a timely fashion. No other notification of the results of an Award of Contract will be provided.

### **3.01 Beginning of Work**

This Contract is not effective and binding until approved by the Secretary of the Finance and Administration Cabinet and filed with the Legislative Research Commission’s Government Contract Review Committee. The Contractor shall not commence any billable work until a valid Contract has been fully executed. The Contract shall represent the entire agreement between the parties. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

### **3.02 Contract Components and Order of Precedence**

The Commonwealth’s acceptance of the Contractor’s offer in response to the Solicitation, indicated by the issuance of a Contract Award, shall create a valid contract between the Parties consisting of the following:

1. Any written Agreement between the Parties.
2. Any Addenda to the Solicitation.
3. The Solicitation and all attachments hereto.

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4. PSC Standard Terms and Conditions.
5. Any Best and Final Offer.
6. Any clarifications concerning the Contractor's proposal in response to the Solicitation.
7. The Contractor's proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

### **3.03 Contract Term and Renewal Option**

The initial term of the Contract is anticipated to be from July 1, 2016 through June 30, 2018.

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been filed with the Legislative Research Commission, Government Contract Review Committee.

The Commonwealth reserves the right to renew this contract for up to two (2) additional two (2) year periods. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705.

### **3.04 Changes and Modifications to the Contract**

Pursuant to 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment by the EPSB prior to the effective date of such modification or change. Modification shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee. Memoranda of Understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

### **3.05 Notices**

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Contract shall be in writing. After the award of the Contract, all communications of a contractual or legal nature are to be made to the Agency Contact.

### **3.06 Personal Service Contract Standard Terms and Conditions**

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The following standard terms and conditions shall be applicable to this solicitation and any contract(s) awarded.

### **PSC STANDARD TERMS AND CONDITIONS**

**Whereas**, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and

**Whereas**, the second party, the contractor, is available and qualified to perform such function; and

**Whereas**, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

**NOW THEREFORE**, the following terms and conditions are applicable to this contract:

#### **Effective Date:**

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC").

Payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

#### **Renewals:**

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

#### **LRC Policies:**

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

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### **Choice of Law and Forum:**

All questions as to the execution, validity, interpretation, construction and performance of this agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

### **Cancellation:**

The state agency shall have the right to terminate and cancel this agreement at any time not to exceed thirty (30) days' written notice served on the contractor by registered or certified mail.

### **Funding Out Provision:**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

### **Reduction in Contract Worker Hours**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

### **Authorized to do Business in Kentucky:**

The contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

### **Registration with the Secretary of State by a Foreign Entity.**

Pursuant to KRS 45A.480 (1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity unless that foreign entity, on the records of the Secretary of State, holds a certificate of authority

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or a statement of foreign qualification. In addition, KRS 14A.9-010(6) states that in order to be eligible for award of a state contract under KRS Chapter 45A or 176, a foreign entity shall have a certificate of authority or a statement of foreign qualification. A Foreign entity is defined within KRS 14A.1-070.

Foreign entities not currently registered with the Secretary of State for a certificate of authority or a statement of foreign qualification must do so prior to the award of a contract. Foreign entities may register through the following online system:

<https://secure.kentucky.gov/sos/ftbr/welcome.aspx>

#### **Invoices for fees:**

The contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

**Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.**

\*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website: <http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

#### **Travel expenses, if authorized:**

The contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of the contract.

#### **Other expenses, if authorized herein:**

The contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of the contract.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by state government.

\* Invoicing for fee: the contractor's fee shall be original invoice(s) and shall be documented by the contractor. The invoice(s) must conform to the method described in the specifications of the contract.

\* Invoicing for travel expenses: the contractor must follow instructions described in the specifications of the contract. Either original or certified copies of receipts must be submitted for

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airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.

\* Invoicing for miscellaneous expenses: the contractor must follow instructions prescribed in the specifications of the contract. Expenses submitted shall be documented by original or certified copies.

#### **Purchasing and specifications:**

The contractor certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he" is construed to mean any person with an interest therein.

#### **Conflict-of-interest laws and principles:**

The contractor certifies that he is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

#### **Campaign finance:**

The contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

#### **Access to Records:**

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research

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Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004.

### **Protest**

Pursuant to KRS 45A.285, The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective Vendors in connection with the solicitation or selection for award of a Master Agreement or Contract.

Any actual or prospective Vendor, who is aggrieved in connection with the solicitation or selection for award of a Master Agreement or Contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:

### **William M. Landrum III, Secretary**

Commonwealth of Kentucky  
Finance and Administration Cabinet  
Room 383, New Capitol Annex  
702 Capitol Avenue  
Frankfort, KY 40601

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

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**Social security: (check one)**

\_\_\_\_\_ the parties are cognizant that the state is not liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

\_\_\_\_\_ the parties are cognizant that the state is liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

**Violation of tax and employment laws:**

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

\_\_\_\_\_ The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

\_\_\_\_\_ the contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached.

**Discrimination:**

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:



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1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for

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further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.